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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

WRITER'S DIRECT LINE

BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, D.C. 20554

Re: CS Docket No. 96-60
Ex Parte Presentation

Dear Mr. Caton:

On December 17, 1996, representatives of Blab Television Network and ValueVision International, Inc., met with Catherine J.K. Sandoval and Eric Liang Jensen to discuss their comments in this proceeding and the impact this proceeding will have on small businesses. In addition, the above-mentioned representatives discussed the attached materials.

1) Supporters of leased access;
2) Leased access chronology;
3) Leased access supporters' message to the FCC;
4) Letters to Chairman Hundt from, respectively, Senator Inouye, Representative Markey, and Members from the Minnesota delegation;
5) Letters from broadcasters whose efforts to use leased access have been frustrated.

Please do not hesitate to communicate with me by telephone (682-7146), or fax (857-0940), if you have questions or comments.

Respectfully submitted,

Patrick J. Lane

cc: Catherine J. K. Sandoval
Eric Liang Jensen

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SUPPORTERS OF LEASED ACCESS

Alliance for Community Media
Association of Independent Video and Filmmakers
Community Broadcasters Association
Consumer Federation of America
Consumer Project on Technology
Hispanic Information & Telecommunications Network, Inc.
Media Access Project
National Alliance for Media Arts and Culture
National Association of Artists' Organizations
National Council on La Raza
Office of Communication of the United Church of Christ
People for the American Way
United States Catholic Conference
ValueVision International, Inc.

The Community Broadcasters Association represents the nation's low power television stations before Congress and the FCC, and generally promotes the industry through its annual convention and other activities. There are more than 400 LPTV stations on the air, originating local programming throughout the nation.

LEASED ACCESS SUPPORTERS' MESSAGE TO THE FCC

With regard to the leased access rulemaking that is ongoing at the FCC, the diverse interests in support of leased access with whom you met propose to have the following messages delivered to the Commission:

1. **DO IT RIGHT.**
   In order to meet Congress's clearly stated goals, the resulting rate must be affordable to a wide spectrum of users. If this results in winners and losers, then that is the result of Congress's mandate, and Congress will take the heat.

2. **IMPLEMENT THE STATUTORY COMMAND.**
   Congress amended the leased access statute in 1992 to expand and explicitly reiterate two overriding goals, which must be the touchstone for FCC action:
   (i) to promote competition among programmers by ensuring a "genuine outlet" for unaffiliated programmers; and
   (ii) to ensure a diversity of programming sources.

   Congress's 1984 statement that leased access should not harm the cable operator must be viewed in the context of the entire legislative history, and the time it was written. This direction does not obligate the FCC to maintain the 1996 status quo which includes the advantages gained by cable operators' twelve years of flouting the law.

3. **MAKE IT SIMPLE.**
   Avoid complex calculations based on data that only cable operators possess. This will avoid numerous complaints and time-consuming administrative litigation.

4. **DO IT NOW.**
   Delay harms the independent programmers that Congress intended to benefit.

5. Points that are not universally agreed to by the non-coalition:
   (i) whether cable operators must set aside a portion of leased access capacity for 501(c)(3) programmers to ensure the widest possible diversity of programming sources
   (ii) whether to favor local programmers or other particular interests

LEASED ACCESS CHRONOLOGY

1984

Congress amends Communications Act to require each local cable operator to designate 10-15% of its channel capacity for commercial use by unaffiliated programmers.

- Leased access was intended to assure "that sufficient channels are available for commercial program suppliers with program services which compete with existing cable offerings, or which are otherwise not offered by the cable operator . . . " H.R. Rep. No. 934, 98th Cong., 2d Sess. 30 (1984).

Though Congress did not regulate leased access rates at this time, it intended cable operators to design rates "to encourage, and not discourage, use of channels set aside under this section." H.R. Rep. No. 934, 98th Cong., 2d Sess. 51 (1984).

1990

In the face of evidence that cable operators had effectively foreclosed leased access opportunities by imposing unreasonable lease rates and conditions, the Commission sought Congressional authority to "deal with the possible exercise of market power by cable operators." Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service, 5 FCC Rcd 4962, 5046-51 (1990).

- The Commission specifically requested authority to ensure by regulation that leased access channels would be available on affordable terms to unaffiliated programmers.

1992

Congress responds unequivocally to the FCC's request in the 1992 Cable Act, and directs the FCC to promulgate rules within 180 days of the Act's passage, establishing maximum reasonable rates that a cable operator may charge such leased access programmers.

- "[T]he principal reason for [the] deficiency [in leased access programming] is that the [1984] Cable Act empowered cable operators to establish the price and conditions for use of leased access channels. . . . [T]he Committee is concerned that cable operators have financial incentives to refuse leased access channel capacity to programmers whose services may compete with services already carried on the cable system, especially when the cable operator has a financial interest in the programming services it carries." H.R. Rep. No. 628, 102d Cong., 2d Sess. 39 (1992).

- The Senate Commerce Committee largely agreed. As the basis for its support of new leased access regulatory authority, the Committee cited its concern that a cable operator's market power may be used to the detriment not only of consumers, but also of competing programmers. S. Rep. No. 92, 102d Cong., 1st Sess. 23 (1991). Leased access was intended to "remedy market power in the cable industry." Specifically, leased access was "a safety valve for programmers who may otherwise be subject to a cable operator's market power and who may be denied access [or] be given access on unfavorable terms." S. Rep. No. 92, 102d Cong., 1st Sess. 30 (1991).

- In taking this action, Congress agreed with the findings in the FCC Cable Report that leased access capacity should be used to promote competition by independent programmers to the services selected by the cable operator. H.R. Rep. No. 628, 102d Cong., 2d Sess. 40 (1992).

1993

April -- Though in 1990 the FCC warned Congress that it would be "inappropriate to retain the deference given to cable operator choices regard leased access rates," the FCC adopts leased access rate caps proposed by cable industry commenters. Not surprisingly, the rate cap formula has been easily exploited by cable system operators to suppress rather than encourage leased access use.

- Fortunately, the FCC announced these regulations as a starting point, and noted at the outset that further refinement would be necessary.

June -- Various supporters of leased access file petitions seeking reconsideration of the April order as inconsistent with the Commission's statutory mandate.

November -- Then-Subcommittee Chairman Daniel Inouye urges the Commission to reconsider its April order, which "may not adhere to Congress's intent and may not realize the promise of leased access."

1994

Though faced with numerous petitions for reconsideration, the Commission fails to act. In its annual report to Congress regarding competition in the video programming marketplace, the Commission does not even mention leased access, notwithstanding that it asked for -- and received -- comments on leased access when it solicited comments in connection with its preparation of the report.

1995

Though still faced with numerous petitions for reconsideration, and in the face of significant evidence that the April, 1993 rules reduced rather than enhanced competition, and harmed independent programmers, the Commission still fails to act.

- Moreover, the Commission's request for comments regarding the 1995 report on competition in the video programming marketplace does not even mention leased access -- though it acknowledges that "Congress expected the Commission to address and resolve problems regarding 'unreasonable cable industry practice, including restricting the availability of programming.'"

November -- ValueVision files a petition for writ of mandamus with the D.C. Circuit, challenging the agency's delay in light of the Congressional mandate, the FCC's own recognition of the need for "refinement," and the irreparable injury to ValueVision (including 900,000 subscribers lost since the FCC's rule promulgated).

1996

January -- D.C. Circuit orders FCC to respond to ValueVision's petition

January -- FCC tells court that the matter is scheduled for March 1996 FCC meeting.

February -- Telecommunications Act of 1996 repeals numerous regulatory obligations imposed by the 1992 Cable Act, but does not repeal the leased access obligation.

March -- "In light of the representation that it expects to resolve the issue" at the March 1996 meeting, the D.C. Circuit denies ValueVision's petition.

March 1996 -- FCC fails to resolve the issue, though it does issue a notice of proposed rulemaking that "tentatively concludes that [its 1993 rule] is likely to overcompensate cable operators and does not sufficiently promote the goals" of the leased access law.

Congress of the United States
House of Representatives
Washington, DC 20515

November 22, 1996

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street NW #814
Washington, D.C. 20554

Dear Chairman Hundt:

We are writing to express our concern about the Federal Communications Commission's delay in issuing effective leased access regulations in accordance with the 1992 Cable Act.

As you know, the intent of leased access is to provide independent television programmers an opportunity to have their programming carried on local cable networks under fair and reasonable conditions. These regulations are essential to many small programmers in our state, and to the cable subscribers who benefit from this additional programming.

We urge you to address this situation by promulgating effective leased access regulations consistent with the explicit direction sent by Congress in 1992 to create a "genuine outlet" for independent programmers.

In 1984, Congress enacted section 532 of the Cable Communications Policy Act of 1984, which requires a cable system operator with more than 36 channels to set aside a percentage of those channels for use by entities unaffiliated with the operator. The legislative history notes the desire of Congress to ensure "the widest possible diversity of information sources are made available to the public," which would be accomplished in part by prohibiting cable operators from exercising "any editorial control over any video programming offered" via leased access.

In 1992, Congress authorized the FCC to regulate the terms and conditions of channel leases. The Senate Report of the 1992 Cable Act explicitly criticized the fact that the economics of leased access were, as of that date, not conducive to its use. The new regulatory authority was intended to reverse that problem and to ensure leased access becomes a "genuine outlet for programmers."

Finally, it is notable that in the 1996 Telecommunications Act, when Congress removed virtually all federal price regulation of cable operators, it declined to modify in any way the leased access mandate of the 1992 law.

Thank you very much for your attention to this issue. We would appreciate prompt action by the FCC on this matter, and we look forward to your response. Should you have any questions about this issue, please contact Dean Peterson of Congressman's Ramstad's staff at (202) 225-2871.

Sincerely,

Rod Grams
U. S. Senator

Paul Wellstone
U. S. Senator

Jim Ramstad
Member of Congress

Bruce Vento
Member of Congress

Martin Sabo
Member of Congress

William Luther
Member of Congress

cc: Rachelle B. Chong
Susan Ness
James H. Quello

United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

November 29, 1993

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Dear Chairman Hundt:

I am writing concerning the Commission's implementation of Section 9 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), dealing with leased commercial access.

The 1984 Cable Act requires cable operators to make a certain number of channels available for lease to independent programmers not affiliated with the cable operator. The purpose of these leased access provisions is to promote diversity of information sources to the public. I believe that these leased access provisions are fundamental to a democratic and pluralistic society. The Commission, in its 1990 Cable Report, expressed a similar view.

The record developed during consideration of the 1992 Cable Act, however, revealed that few programmers are able to take advantage of the opportunity to lease channels. One of the primary reasons, as submitted in testimony to the Committee, is that most programmers cannot afford the rates charged by the cable operators. The 1992 Cable Act thus assigned to the Commission the responsibility of ensuring that cable operators charge reasonable rates, terms, and conditions for leased access channels. At that time the 1992 Act was passed, Congress stated its belief that leased access channels would provide competition to existing cable programming providers.

I am concerned that the Commission's initial decision last May establishing rates and conditions for leased access in MM Docket 92-266 may not adhere to Congress's intent and may not realize the promise of leased access. I am particularly concerned about the Commission's decision not to consider a preferential leased access rate for not-for-profit organizations.

In its Rate Order, released in May of this year, the Commission established three different rate categories: for pay services, for "home-shopping" services, and for "all other". The "all other" category includes commercial and not-for-profit

users. By placing non-profits in the same category as advertiser-supported cable TV services, the Commission may have unwittingly made leasing beyond the financial capability of non-profits. Using the example contained in the FCC's decision of a rate of $0.50 per month, a non-profit lessee would have to pay over $300 million annually for a single channel reaching all cable subscribers. These figures cast serious doubt on the Commission's view, as expressed in its initial decision, that it expects maximum rates to be "sufficiently low as to attract not-for-profit programmers."

Congress has already expressed a concern about establishing prices for not-for-profit users at the same level as other commercial users:

> [B]y establishing one rate for all leased access users, a price might be set which would render it impossible for certain classes of cable services, such as those offered by not-for-profit entities, to have any reasonable expectation of obtaining leased access to a cable system. (1984 House Report at 47)

The Commission's Rate Order included a brief, one-paragraph, discussion of the issue of charges for leased access by non-profits. The Commission itself stated in the order that, due to the few comments received on the leased access issue, "the rules we adopt should be understood as a starting point that will need refinement both through the rule making process and as we address issues on a case-by-case basis." (Rate Order, para. 491)

For all these reasons, I believe the Commission should take another look at the issue of leased access rates, especially for not-for-profit entities. I hope that you will reconsider your rules to comport with the intent of Congress that leased access provide a genuine outlet for both commercial and non-profit entities.

Sincerely,

DANIEL K. INOUYE
Chairman
Communications Subcommittee

U.S. House of Representatives

Committee on Energy and Commerce

SUBCOMMITTEE ON TELECOMMUNICATIONS AND FINANCE

Washington, DC 20515-6119

January 7, 1994

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Chairman Hundt:

I am writing regarding the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act) and the Commission's implementation of Section 9 of the Act, concerning leased commercial access.

Leased commercial access was initially established in the Cable Act of 1984 in an effort to ensure that non-affiliated programmers could gain access to monopoly-controlled cable systems. The rates and terms of carriage established by cable operators in the ensuing years, however, were such that very few non-affiliated programmers took advantage of the opportunity to use leased access channels.

During consideration of the Cable Act of 1992, Congress found "...that leased access has not been an effective mechanism for securing access for programmers to the cable infrastructure or to cable subscribers. In the Committee's view, the principal reason for this deficiency is that the Cable Act empowered cable operators to establish the price terms and conditions for use of leased access channels." [House Report 102-628, p. 39] In order to encourage the active use of leased access as an option for non-affiliated programmers, Congress directed the FCC to establish reasonable terms and conditions and maximum allowable rates for the lease of these channels. While not imposing common carrier requirements on cable operators, Congress sought to open up cable as a delivery system for a diversity of information services.

There are two issues I would ask you to consider in regard to the Commission's implementation of regulations on commercial leased access.

First, in its Report and Order, MM Docket 92-266, the Commission established three categories of rates for leased access: pay-per-view services; home-shopping services; and all other services. This rate structure does not establish a

different rate for non-profit and for-profit programmers who seek to use leased access channels. If the Commission places non-profit programmers in the same rate category as for-profit programmers, it may make leasing financially impossible for non-profits and eliminate a source of potential diversity and innovation in programming.

In establishing leased commercial access, Congress recognized that the nature of the service being provided and its implicit "ability-to-pay" should play a role in the rate charged: "A premium movie service will obviously warrant a very different and, in all probability, a higher price than a news or public affairs service, and both of these would pose a different pricing situation from an educational or instructional service. [House Report 98-934, p. 51] Despite obvious differences in ability to pay among service providers, Congress in the 1984 and 1992 Cable Acts, and the FCC in its regulations, attempted to ensure the participation of a broad range of services through leased access. In particular, Congress specified in the 1992 Act that commercial leased access should be structured to include both for-profit and not-for-profit use. Section 9(d)(5) states, "For the purposes of this section, the term 'commercial use' means the provision of video programming whether or not for profit."

I applaud the Commission's implicit recognition of the importance of ability to pay in establishing three separate rate categories for pay-per-view services, home-shopping services, and all other services. I urge you to extend this concept to not-for-profit programmers and consider ability to pay in establishing the appropriate, reasonable rates for non-profit services.

On a related issue, one of the primary Congressional concerns driving the Cable Act of 1992 was the rapid integration and concentration in the cable industry and the resulting anticompetitive practices of cable operators. In the 1992 Cable Act Congress broadened the purpose of the commercial leased access in an effort to impose common carrier style accessibility requirements on a limited part of the cable system. This was done to ensure access for alternative providers without imposing common carrier requirements, since most cable systems are closed transmission systems of limited channel capacity.

Last February I wrote to Acting Chairman Quello and raised the question of common carrier status for cable companies given their plans to expand to 500 channels or move toward a "video-on-demand" multichannel delivery system that closely resembles the point-to-point networks designed for the public switched network.

I urged consideration of the principle of non-discriminatory access to the network, whether owned by a telephone company, a cable company, or other entity, by video programmers or video service providers.

Although we have heard much about plans for 500 channels, most cable systems are of limited capacity today and for the near future. On these systems of limited capacity, commercial leased access has the potential to be a vital entry point for a diverse range of alternative providers. As cable systems become a part of the information superhighway it is critical that the ability of third party unaffiliated programmers to gain access to these systems is expanded and enhanced.

Thank you for your attention to this matter. If you have any questions or comments please call me directly or have your staff contact Kristan Van Hook or David Zesiger of the Subcommittee staff at 226-2424.

Sincerely,

Edward J. Markey
Chairman

December 16, 1996

The Honorable Ron Wyden,
U.S Senate
259 Russell Senate Office Building
washington, D.C. 20510

Jim Brelsford
2301 Ironwood
Eugene, OR. 97401
(541) 683-5515

Dear Senator Wyden,

As an independent programmer, I am very angry about the Federal Communications Commission's four year delay in implementing the Leased Access provisions of the 1992 Cable Act. These laws were intended to insure that people like me, who are not financially affiliated with the enormous cable companies that control cable system access, would have reasonable oppertunities for local cable system carriage. The FCC's lengthy delay in implementing Congress's mandate has been very harmful to programmers and producers like me, as well as to the audiences we are trying to serve.

The 1992 Leased Access provisions - which notably were not repealed in the 1996 Telecommunications Act- were one of Congress's many responses to the increased concentration among cable system operators and programmers Having witnessed excessive cable company discrimination against programmers that did not have industry financial participation, Congress directed the FCC to develop regulations that would provide a realistic oppertunity for unaffiliated programmers to crack the industry oligopoly and gain access to the velwing public. Unfortunately, in four years the FCC has yet to effectively implement Congress's mandate, while in the interim the integrated cable companies are charging outrageous rates for access when they are providing it at all. As I understand before the "1992 Cable Act" became effective, Congress also allocated a substancial amount of money to the FCC in order to fofill it's mandate in implementing the Leased Access Provisions. Did the FCC not receive these funds? If so, what was it used for? I have enclosed two different incidents inwhich I had with a cable operator, and one with the FCC, inwhich they have had on their desk for 16 months now. Please let me know who in your office will assist me in persuading the FCC to follow Congress's instructions on this issue.

Thank You for your consideration

Jim Brelsford

December 16, 1996

The Honorable Peter A. DeFazio
U.S. House of Representatives
2134 Rayburn House Office Building
Washington, D.C. 20515

Jim Brelsford
2301 Ironwood
Eugene, OR. 97401
(541) 683-5515

Dear Congressman DeFazio,

As an independent programmer, I am very angry about the Federal Communications Commission's four year delay in implementing the Leased Access provisions of the 1992 Cable Act. These laws were intended to insure that people like me, who are not financially affiliated with the enormous cable companies that control cable system access, would have reasonable oppertunities for local cable system carriage. The FCC's lengthy delay in implementing Congress's mandate has been very harmful to programmers and producers like me, as well as to the audiences we are trying to serve.

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Thank You for your consideration.

Jim Brelsford

RE. **LEASED ACCESS**
Jim Brelsford
Eugene, OR.

In March of 1993, I Jim Brelsford went to a local cable operator in Eugene, OR. (which happen to be TCI) and inquired about purchasing airtime for a couple of programs I was developing. The TCI representative I spoke with didn't have any information about 1/2hr. programming because no one at TCI had ever sold any 1/2hr. programing as far as she knew. Rebecca Merchant, TCI's sales representative told me she would speak to her supervisor and get back to me. The next day she called me and told me about their LEASED ACCESS (channel 9), and that we should get together and discuss it further. She also said her supervisor Todd Wylie wanted to see a demo tape of my show. I then gave them some raw footage. At our next meeting Ms. Merchant told me her supervisor Todd Wylie liked it and wanted to know how soon could we start production. I told Ms. Merchant that I needed to know what times were available, and how much per 1/2hr. spots. I also needed to talk with my potential clients on the concept. Ms. Merchant gave me a "Letter of Intent" so I could have something in writing to solicit clients for my new program. She hand signed 15 to 20 Copies. see attached (A) "Letter of Intent" from TCI- Rebecca Merchant

After reveiwing the rate sheet that TCI gave me a couple of days later, I decided that I could not commit to those prices or terms. see attached (B) "Rate Sheet" from TCI-OR

On June 14th 1993, three months later another TCI representative called me, Julia Dean. We had met earlier that year, she informed me that she was now working for TCI, and that there was a new thing called LEASED ACCESS (channel 9). She said it would be a perfect median for my show if was stiil interested in pursuing your program. I told Ms. Dean yes, so we met at TCI's office in Eugene, Or. on June 18th 1993. TCI's sales manager Todd Wylie, Julia Dean and myself were at this meeting. Todd asked "now what kind of show did you want to air?" I said a real estate show. It would be a video walkthrough format. Basically, advertising homes and property "for sale" by owners, builders and real estate agents. I requested an 8pm time slot for my show. Todd Wylie told me TCI's Pay-Per-Veiw programing was airing every weekend at 8pm on (channel 9) and if I wanted the same time slot everyday as I did, TCI suggested the 6pm time slot. This way my show would air the same time everyday and thats

important to stay consistent for a new program. TCI also told me that maybe once or twice a month I might be pre-empted by Pay-Per-Veiw. I asked if I would recieve prior notice of any pre-emption. Todd Wylie told me that their marketing department gives them a schedule of Pay-Per-Veiw events 30 days in advance, so I would have plenty of time to inform my clients that my program was not going to air at it's scheduled time.

TCI wanted me to sign the contract now in order to reserve the 6pm time, I told Todd I neeeded to talk to my clients to see if the 6pm time was acceptable. see attached (C) "Standard Contract" from TCI-OR I signed the contract, TCI told me they would give me a copy as soon as the times were marked in and agreed upon. This never happened!

On July 16th 1993 I paid TCI $950.00 in advance for airtime beginning July 17th thru 31st. 1993. My 1st premier show was to air on July 17th at 6pm on TCI's LEASED ACCESS (channel 9). Also starting this weekend was "The Tour of Homes" an annual event of the year in Eugene. It's when the Builders Association of Lane County put together a three week tour of new homes for sale. TCI aired their own Pay-Per-View programming in my time slot that weekend both days, Sat. at 6pm. & Sun. at 6pm. With no prior notice as I was promised. TCI also had a dedicated channel for their own real estate show (ch.13). TCI's programing aired as scheduled. On July 19th I was hot, I wanted to speak to Todd Wylie ASAP. I was told he was on vacation until July 27th. by Julia Dean. I explained to her how upset I was and how much heat I took from my clients because my show did not air as promised. This was very detrimental to my credibilty and my business, especially because I was a new show. TCI knew this! I asked for a letter of apology from TCI on my clients behalf, because they had their clients ask them why their show didn't air as promised. TCI refused to write a letter of apology. Julia said she was sorry this happened and she would make sure I get credit for the two times the show didn't air. I told Julia that I wanted to see Todd Wylie as soon as I could the day he gets back. My show was pre-empted without prior notice as promised, and I wanted a letter of apology from TCI for my clients. The newspapers do this all the time when they make a mistake.

On July 27th, 1993 at TCI's offices in Eugene, OR. I met with Todd & Julia. Todd's first words were "Sorry about the pre-emption without notice, but I can't give you a letter of apology, it's company policy. Marketing didn't give us a schedule of Pay-Per-View events for the month of July, thats why it wasn't scheduled on the log sheet. I asked, "You mean

Marketing needs to give me a letter of apology. Todd said "Jim, TCI isn't going to give anyone a letter of apology? The FCC Rules & Regulations gives us the right to pre-empt any show, anytime, and for any reason" I said, I would like to see those FCC Rules & Regulations. Todd told me Julia would get me a copy of those. This never happened!

Next was the good news, Todd told me that I had charged up 49 hrs. of production time and that I owed $180.00 for tapes and before he could let me back in the editing facility I had to pay this bill or he would be forced to cancel my show and turn me over to collections. I couldn't believe what I was hearing, I said Todd this isn't what we agreed upon, and he acknowledged this but said "Look Jim, your a new business and I can't extend you this kind of credit" Our agreement was I was to pay for airtime in advance and all other monies such as production was to be billed at the end of the month and due the end of the following month. I asked Todd to get me a copy of the production log and lets go over this bill. Todd agreed that I had only used 34 hrs. instead of 49 hrs. and that TCI was to give me 4 hrs. free production time per month for each new show per our agreement. Julia Dean told me during our editing sessions that there would be no charge for the production tapes per Todd Wylie. Now TCI wants me to pay for the production time and tapes $1680.00 by July 30th or they will cancel my show and turn me over to collections. Todd knew this wasn't a part of our original agreement but said, It's the deal now! I said Todd I need a copy of my agreement, he said Julia will get you one, he sent Julia to type up the new accellerated bill that TCI presented me. I didn't know what to do, I didn't have a copy of my so called contract and I knew TCI wasn't going to give me one. I had no option but to agree to their demands and agree to a payment schedule I knew, and TCI knew I could not keep. TCI wanted me to agree to pay them $700.00 in two days and the balance on the 10th of August. On top of all this, I wasn't allowed back into the editing facility at TCI until this was paid in full. Now it dosen't take a rocket scientist to figure out if I can't add new clients to my program how can I generate income to pay this accellerated bill. I believe that TCI was useing improper means for an improper purpose, which was contrary to what the agreement was between TCI & Jim Brelsford. TCI was modifying the terms of this agreement whether I agreed or not. They threatened me with cancellation and collections in order to get me to agree to their new terms. It gets better!

Todd was now informing me that Marketing in mid-Aug. was going to take over my 6pm time slot for it's own Pay-Per-View programming and I

would be moved out of my (primetime) slot to a 5:30 spot. I asked, "What about our agreement? he said agian," This is the deal now!" I agian asked for a copy of the original agreement, Todd agian said, Julia will get it for you. This never happened!

On August 16th 1993 TCI's Marketing department began to air it's Pay-Per-View programing in my 6pm time slot without prior notice, or my concent, or compensation. It seems as though TCI's Marketing thought that the 6pm time slot was perfect for their Pay-Per-View programming, despite any agreement or contract it might be legally obligated. Three days after the fact TCI gave me a pre-emption notice for the change in airtime and a schedule for the remainder of Aug. & Sept. 1993. They began to air my show at 5:30, and it was also pre-empted. I told TCI, that I was not going to pay for a time slot I didn't agree to purchase, and one my clients didn't contract for. TCI was also advertising the airtimes of my show on other stations, the only problem was, TCI was advertising my show to air at 6pm. when it was actually airing my show at 5:30. This went on for 10 days before I brought this to their attention.

On August 20th. 1993, almost 2 months after I signed the contract, TCI gave me a copy of a contract, but it wasn't the original contract we had both signed. It was a revised version signed only by TCI and not me, for the 5:30 time slot. see attached (D) "Standard Contract" Revision

On August 29th. 1993 TCI cancelled my program on their LEASED ACCESS (channel 9). Without notice, not even a phone call!

On Sept. 5th 1993 TCI sent me several invoices for production and airtime. I called the billing department and spoke to Sharon O'Leary I told her who I was and inquired about the invoices I had just received. I asked her when these were due, and she told me at the end of the month, (which would be at the end of September). I then called TCI and asked to speak to Julia Dean. I asked her why my show was cancelled. She told me that Todd Wylie authorized it because of non-payment. I told her that I had just recieved the invoices today Sept. 5th. I guestioned, how could I be cancelled for non-payment if TCI had not yet properly billed me. I once again asked for a copy of those FCC Rules & Regulations that Todd spoke about and she told me Todd would have to get those for me because she knew nothing about that FCC stuff. She told me she would have Todd Wylie call me. This never happened! September 5th. 1993

TCI CABLEVISION OF OREGON, INC.

(A)

To whom it may concern:

My name is Rebecca Merchant and I am writing to you about Jim Brelsford and his intent to purchase time sales with TCI Cablevision of Oregon, INC.

Jim Brelsford has been in contact with TCI for the past few months concerning the purchase of 30 minute time sales on a leased access channel. (ch. 9) The show will be titled 4-SALE TV. Cable channel 9 reaches over 53,000 cable subscribers in the Eugene-Springfield area.

Jim will be purchasing 4 half-hour shows every Friday, Saturday, and Sunday. These shows will air at 8:00am, 6:00pm, 8:00pm, and 10:00pm on Friday and at 8:00am, 10:00am, 2:00pm and 6:00pm on Saturday and Sunday. Based on those numbers, TCI will bonus the client either 166 :30 second promotional spots per month or 333 :15 second promotional spots per month. These spots will actively promote 4-SALE TV on nine cable networks including CNN, ESPN, USA and MTV. Promotional spots will begin airing two weeks prior to the launch date of April 1st.

I intend to work closely with Jim as 4-SALE TV enters the marketplace. I've arranged for the regional newspaper the *Register Guard* to place the show and its schedule in the programming line-up. I feel we will be able to provide a strong promotional back-up for this show and that the market will use this format of buying and selling cars. The price is one of the most (if not the most) competitive in the market, underpricing all major printed classifieds while providing a far superior colored video image versus print.

Thank you for your time.

Rebecca Merchant

990 GARFIELD ST., P.O. BOX 2500, EUGENE, OREGON 97402 (503) 484-3006

James D. Brelsford
2301 Ironwood
Eugene, OR 97401
Telephone: (503) 683-1515

August 17, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street NW, Room 222
Washington, D.C. 20554

RE: Complaint Against TCI, Inc., Eugene, Oregon
for Failure to Provide Leased Access Time

Dear Mr. Caton:

Pursuant to Section 76.975, I wish to submit a complaint against TCI, Inc. ("TCI"), the operator and franchisee of the cable system serving Eugene, Oregon, for its repeated and continued failure to provide me with leased channel access. This problem arose more than two years ago during the summer of 1993 when I first entered into a contract with TCI to air a daily half hour program which I had developed and produced. After my program was repeatedly bumped, cancelled and rescheduled I was forced off the system when TCI unilaterally insisted on changes in payment terms and demanded unreasonable charges for production, technical assistance and leased access. At the time I was unaware that the Commission provided a tribunal to hear complaints about leased access problems.

More recently I have attempted to restart my program on the TCI system. In early June, 1995 I asked TCI for information on the availability of a leased access channel and the costs which would be involved. TCI told me that leased access channels were not available at the time and would not be available for another six weeks (*see* attached letter dated June 8, 1995). When I questioned this in my letter of June 21, 1995, the TCI sales manager said time would be available but their system no longer had local origination capability for local access programming. Instead he stated that any agreement for the use of leased channels would require me to buy $10,258 of local origination equipment and that I would be charged $50 an hour for any engineering costs. This came as a surprise to me as I knew from my pervious experience that TCI had all the local origination equipment necessary on hand when it carried my program on their system in the summer of 1993. However TCI now claims that local origination equipment is unavailable as it is being used in "another area" of the company (*see* attached letter dated June 29, 1995).

My understanding of the FCC's rules is that TCI is required to provide up to 10% of its channels for leased access if it has more than 36 activated channels (the local system has 39 channels). In addition, they are prohibited from imposing technical standards for leased access operators that are any higher than those applied to public, educational and government access channels. Furthermore, I believe the Commission obligates a cable system to provide leased access programmers with a minimum amount of technical support whether it be equipment, technology or other miscellaneous support necessary for the leased access programmer to put on its programs. Although the Commission's rules do not spell out in detail what the equipment must be it does say that a cable system must offer the same services that the system provides

to others who use the cable operator's non-leased access channel capacity. Moreover, I am aware that TCI has up to a dozen racks of local origination equipment used for inserting its local commercials on various cable channels provided by the system. Given that TCI has the local origination equipment; has provided this equipment in the past, and carries local public and educational channels, their statement that the necessary local origination equipment is not now available to the nation's largest cable company rings hollow. It is nothing more than a shallow excuse to deny me leased access.

In light of the above, I respectfully request the Commission to investigate this matter and direct TCI to provide me with the necessary access and technical support they are obligated to provide. I appreciate your prompt assistance in this matter.

Sincerely yours,

James D. Brelsford

JDB/nlk
Enclosure
cc: Michael White, General Manager
TCI Cablevision of Oregon, Inc.

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

SEP 3 1996

IN REPLY REFER TO:
CN-9604334

RECEIVED
SEP 09 1996
EUGENE, OR 9740?

The Honorable Peter A. DeFazio
Member, U.S. House of Representatives
151 West 7th Avenue
Suite 400
Eugene, Oregon 97401-2649

Dear Congressman DeFazio:

Thank you for your letter on behalf of your constituent, Mr. James D. Brelsford of Eugene, Oregon. Mr. Brelsford contacted your office concerning the status of a leased access complaint filed against TCI, Inc. in August, 1995. In addition, Mr. Brelsford requested the effective dates of the Cable Communications Policy Act of 1984, and Sections 76.970 and 76.971 of Title 47 of the Code of Federal Regulations (CFR). I appreciate the opportunity to respond.

The Federal Communication Commission's records indicate that Mr. Brelsford's complaint was received on August 24, 1995 and was assigned case number CSR 4582-L. Because Mr. Brelsford's complaint is pending before the Commission, I cannot comment on or discuss any specific matter related to the proceeding. However, please be assured that, before a final decision is made, the complaint and any related material properly filed with the Commission will be considered carefully.

Mr. Brelsford also requested information concerning the 1984 Cable Act and 47 C.F.R. § 76.970 and § 76.971. Except as otherwise provided in the Act, the 1984 Cable Act became effective 60 days after its enactment date of October 30, 1984. 47 C.F.R § 76.970 and § 76.971 became effective on October 1, 1993.

I trust that this response will prove both informative and helpful.

Sincerely,

Michael S. Perko
Director, Government Outreach
Cable Services Bureau

Re. Leased Access
Jim Brelsford
Eugene, OR.

What confuses me most about this leased access stuff is that Congress and the Senate both addressed this issue back in 1984. The Act that was passed amended the "Communications Act of 1934" to provide a national policy regarding cable television. "Cable Communications Policy Act of 1984" PUBLIC LAW 98-549--OCT. 30. 1984 98 STAT. 2779-2784 47 USC 532. "Sec. 612. Cable channels for commercial use.
"(b)(1) A cable operator shall designate channel capacity for commercial use by persons unaffiliated with the operator in accordence with the following requirements:

(A) An operator of any cable system with 36 or more activated channels shall designate 10% of such channels.

(4) A cable operator may use any unused channel capacity designated pursuant to this section until the use of such channel capacity is obtained, pursuant to a written aggrement, by a person unaffiliated with the operator.

Now, Congress and the Senate passed the "1992 Cable Act" which I guess you could say that the FCC refuses to implement. What we have here now is the cable industry which refuses to obey any Federal law that Congress or the Senate inacts, and which I might add is making millions on the very channels it is supposed to be leaseing to third party programmers who aren't affiliated with the cable giants. Now the cable companies are buying up as much programming as they can extend themself's while they are violating Federal law in not providing the LEASED ACCESS.

I think it's time to take a strong look at whats going on in the cable industry. These people have been doing what ever they want, and it's because they are so big they don't have to answer to anyone. Ask the FCC! If the FCC is supposed to be the watchdog of the cable industry, it's time to get a bigger dog!

If anyone who reads this would like to speak with me, please call anytime!

Jim Brelsford

Jim Brelsford

R K PRODUCTION COMPANY
2626 Glenchester Road
Wexford, Pennsylvania 15090
412-934-1892

December 5, 1996

The Honorable William Coyne
U.S. House of Representatives
2455 Rayburn Building
Washington, D.C. 20515

Dear Congressman Coyne:

As an independent television programmer, I am very angry about the Federal Communications Commission's four year delay in implementing the leased access provisions of the 1992 Cable Act. These laws were intended to ensure that companies like mine, which are not financially affiliated with the enormous cable companies that control cable system access, would have reasonable opportunities for local cable system carriage. The FCC's lengthy delay in implementing Congress's mandate has been extraordinarily harmful to programmers like mine, as well as to the audiences we are trying to serve.

The 1992 leased access provisions - which notably were not repealed in the 1996 Telecommunications Act - were one of Congress's many responses to the increased concentration among cable system operators and the increased vertical integration between system operators and programmers. Having witnessed excessive cable company discrimination against programmers that did not have industry financial participation, Congress directed the FCC to develop regulations that would provide a realistic opportunity for unaffiliated programmers to crack the industry oligopoly and gain access to the viewing public. Unfortunately, in four years the FCC has yet to effectively implement Congress's mandate, while in the interim the integrated cable companies are engaged in a consistent industry-wide pattern of either flat-out denying access to independent programmers or offering access only under conditions which make it impossible for independent programmers to succeed. These conditions often include prices for cable time that are so high that no independent programmer can make a business work.

In addition to endless delay in developing effective regulations, the FCC has dragged its feet in dealing with complaints from leased access programmers. My company has been waiting more that seven months for rulings on complaints it has filed. Some programmers have waited much, much longer. It is impossible for a leased access programmer to do business in an environment where cable companies can behave illegally without fear of FCC action and where the FCC can nullify an Act of Congress by not making an honest effort to implement it.

I request your assistance in persuading the FCC to follow Congress's instructions on this issue.

Thank you,

Frank Kirkwood
President